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"Perpetual Vigilance is the Price of Liberty," for "Power is always Stealing from the Many to the Few."

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Report of the Select Committee of THIRTEEN.

Mr. CLAY, from the Select Committee of Thirteen to whom were referred various resolutions relating to California, to other portions of the territory recently acquired by the United States from the republic of Mexico, and to other subjects connected with the institution of slavery, submitted the following

REPORT.

The Committee entered on the discharge of their duties with a deep sense of their great importance, and with earnest and anxious solicitude to arrive at such conclusions as might be satisfactory to the Senate and to the country. Most of the matters referred have been not only subjected to extensive and serious public discussion throughout the country, but to a debate in the Senate itself, singular for its elaborateness and its duration; so that a full exposition of all those motives and views which, on the several subjects confided to the committee, have determined the conclusions at which they have arrived, seems quite unnecessary. They will, therefore, restrict themselves to a few general observations, and to some reflections which grew out of those subjects.

Out of our recent territorial acquisitions, and in connection with the institution of slavery, questions most grave have sprung, which, greatly dividing and agitating the people of the United States, have threatened to disturb the harmony if not to endanger the safety, of the Union. The committee believe it to be highly desirable and necessary speedily to adjust all those questions, in a spirit of concord, and in a manner to produce, if practicable, general satisfaction. They think it would be unwise to leave any one of them open and unsettled, to fester in the public mind, and to prolong, if not aggravate, the existing agitation. It has been their object, therefore, in this report, to make such proposals and recommendations as would accomplish a general adjustment of all those questions.

Among the subjects referred to the committee, which command their first attention, are the resolutions offered to the Senate by the Senator from Tennessee, Mr. Bell. By a provision in the resolution of Congress annexing Texas to the United States, it is declared that "new States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter [illegible] consent of said State of Texas, and having sufficient population, may hereafter, by the consent of said State be formed out of the territory thereof, which shall be *entitled to admission* under the provisions of the Federal Constitution; and such States as may be formed out of that portion of said territory lying south of 36° 30' north latitude, commonly known as the Missouri compromise line, *shall be* admitted into the Union with or without slavery, as the people of each State asking admission may desire."

The committee are unanimously of opinion, that whenever, one or more States, formed out of the territory of Texas, not exceeding four, having sufficient population, with the consent of Texas, may apply to be admitted into the Union, they are entitled to such admission, beyond all doubt, upon the clear, unambiguous, and absolute terms of the solemn compact contained in the resolution of annexation adopted by Congress and assented to by Texas. But, whilst the Committee conceive that the right of admission into the Union of any New States carved out of the territory of Texas, not exceeding the number specified, and under the conditions stated, cannot be justly controverted, the committee do not think that the formation of any such new States should now originate with Congress. The initiative, in conformity with the usage which has heretofore prevailed, should be taken by a portion of the people of Texas themselves, desirous of constituting a new State, with the consent of Texas. And in the formation of such new State, will be for the people composing it to decide for themselves whether they will admit or will exclude slavery. And however they may decide that purely municipal question, Congress is bound to acquiesce, and to fulfil in good faith the stipulations of the compact with Texas. The committee are aware that it has been contended that the resolution of Congress annexing Texas was unconstitutional. At a former epoch of our country's history, there were those (and Mr. Jefferson, under whose auspices the treaty of Louisiana was concluded, was among them) who believed that the States formed out of Louisiana could not be received into the Union without an amendment of the Constitution. But the States of Louisiana, Missouri, Arkansas, and Iowa have been all nevertheless, admitted. And who would now think of opposing the admission of Minnesota, Oregon, or other new States formed out of the ancient province of Louisiana, upon the ground of an alleged original defect of constitutional power? In grave, national transactions, while yet in their earlier or incipient stages, differences may well exist; but when once they have been decided by a constitutional majority, and are consummated, or are in a process of consummation, there can be no other safe and prudent alternative than to respect the decision already rendered, and to acquiesce in it. Entertaining these views, a majority of the committee do not think it necessary or proper to recommend, at this time, or prospectively, any new State or States to be formed out of the Territory of Texas. Should any such State be hereafter formed, and present itself for admission into the Union, whether with or without the establishment of slavery, it cannot be doubted that Congress will, under a full sense of honor, of good faith, and of all the high obligations arising out of the compact with Texas, decide, just as it will decide under the influence of similar considerations in regard to new States formed of or out of New Mexico and Utah, with or without the institution of slavery according to the constitutions and judgment of the people who compose them, as to what may be best to promote their happiness.

In considering the question of the admission of California as a State into the Union a majority of the committee conceive that any irregularity by which that State was organized without the previous authority of an act of Congress ought to be overlooked, in consideration of the omission by Congress to establish any territorial government for the people of California, and the consequent necessity which they were under to create a government for themselves best adapted to their own wants. There are various instances, prior to the case of California, of the admission of new States into the Union, without any previous authorization by Congress. The sole condition required by the Constitution of the United States in respect to the admission of a new State is, that its constitution shall be republican in form. California presents such a constitution; and there is no doubt of her having a greater population than that which, according to the practice of the government, has been heretofore deemed sufficient to receive a new State into the Union.

In regard to the proposed boundaries of California, the committee would have been glad if there existed more full and accurate geographical knowledge of the territory which those boundaries include. There is reason to believe that, large as they are, they embrace no very disproportionate quantity of land adapted to cultivation. And it is known that they contain extensive ranges of mountains, deserts of sand, and much unproductive soil. It might have been, perhaps, better to have assigned to California a more limited front on the Pacific; but even if there had been reserved on the shore of that ocean a portion of the boundary which it presents for any other State or States, it is not very certain that an accessible interior of sufficient extent could have been given to them to render an approach to the ocean through their own limits of any very great importance.

A majority of the committee think that there are many and urgent concurring considerations in favor of admitting California with the proposed boundaries, and of securing to her at this time the benefits of a State government. If, hereafter, upon an increase of her population, a more thorough exploration of her territory, and an ascertainment of the relations which may arise between the people occupying its various parts it should be found conducive to their convenience and happiness to form a new State out of California, we have every reason to believe, from past experience, that the question of its admission will be fairly considered and justly decided.

A majority of the Committee, therefore, recommend to the Senate the passage of the bill reported by the Committee on Territories for the admission of California as a State into the Union. To prevent misconception, the committee also recommend that the amendment reported by the same committee to the bill be adopted, so as to leave incontestable the right of the United States to the public domain and other public property in California.

Whilst a majority of the committee believe it to be necessary and proper, under actual circumstances, to admit California, they think it quite as necessary and proper to establish governments for the residue of the territory derived from Mexico, and to bring it within the pale of the Federal authority. The remoteness of that territory from the seat of the General Government; the dispersed seat of its population; the variety of races—pure and mixed—of which it consists; the ignorance of some of the races of our laws, language, and habits; their exposure to inroads and wars of savage tribes; and the solemn stipulations of the treaty by which we acquired dominion over them, impose upon the United States the imperative obligation of extending to them protection, and of providing for them government and laws suited to their condition. Congress will fail in the performance of a high duty, if it does not give, or attempt to give, to them the benefit of such protection, government and laws. They are not now, and for a long time to come may not be, prepared for State government. The territorial form, for the present, is best suited to their condition. A bill has been reported by the Committee on Territories, dividing all the territory acquired from Mexico not comprehended within the limits of California into two Territories, under the names of New Mexico and Utah, and proposing for each a territorial government.

The committee recommend to the Senate the establishment of those territorial governments: and in order more certainly to secure that desirable object, they also recommend that the bill for their establishment be incorporated in the bill for the admission of California, and united together, they both be passed.

The combinations of the two measures in the same bill is objected to on various grounds. It is said that they are incongruous, and have no necessary connexion with each other. A majority of the committee think otherwise.—The object of both measures is the establishment of government suited to the conditions, respectively, of the proposed new State and of the new Territories. Prior to their transfer to the United States, they both formed a part of Mexico, where they stood in equal relations to the government of that republic. They were both ceded to the United States by the same treaty. And in the same article of that treaty, the United States solemnly engaged to protect and govern both. Common in their origin, common in their alienation from one foreign government to another, common in their wants of good government, and conterminous in some of their boundaries, and alike in many particulars of physical condition, they have nearly every thing in common in the relations in which they stand to the rest of this Union. There is, then, a general fitness and propriety in extending the parental care of government to both in common. If California, by a sudden and extraordinary augmentation of population, had advanced so rapidly as to mature her for State government, that furnishes no reason why the less fortunate Territories of New Mexico and Utah should be abandoned and left ungoverned by the United States, or should be disconnected with California, which, although she has organized for herself a State government, must be legally and constitutionally regarded as a Territory, until she is actually admitted as a State in the Union.

It is further objected, that by combining the two measures in the same bill, members who may be willing to vote for one and unwilling to vote for the other, would be placed in an embarrassing condition. They would be constrained, it is urged, to take or to reject both. On the other hand there are other members who would be willing to vote for both united, but would feel themselves constrained to vote against the California bill if it stood alone.—Each party finds in the bill which it favors something which commends it to acceptance, and in the other something which it disapproves. The true ground, therefore, of the objection to the union of the measures is not any want of affinity between them, but because of the favor or disfavor with which they are respectively regarded. In this conflict of opinion, it seems to a majority of the committee that a spirit of mutual concession enjoins that the two measures should be connected together; the effect of which will be, that neither opinion will exclusively triumph, and that both may find in such an amicable arrangement enough of good to reconcile them to the acceptance of the combined measure.—And such a course of legislation is not at all unusual. Few laws have ever passed in which there were not parts to which exception was taken. It is inexpedient, if not impracticable, to separate parts, and embody them in distinct bills, so as to accommodate the diversity of opinion which may exist. The Constitution of the United States contained in it a great variety of provisions, to some of which serious objection was made in the convention which formed it by different members of that body, and when it was submitted to the ratification of the States, some of them objected to some parts and others to other parts of the same instrument. Had these various parts and provisions been separately acted on in the convention, or separately submitted to the people of the United States, it is by no means certain that the Constitution itself would ever have been adopted or ratified. Those who did not like particular provisions found compensation in other parts of it. And in all cases of constitutions and laws when either is presented as a whole, the question to be decided is whether the good which it contains is not of greater amount, and does not neutralize any thing exceptionable in it. And as nothing human is perfect, for the sake of that harmony so desirable in such a confederacy as this, we must be reconciled to secure as much as we can of what we wish, and be consoled by the reflection that what we do not exactly like is a friendly concession, and agreeable to those who, being united with us in a common destiny, it is desirable should always live with us in peace and concord.

A majority of the committee have, therefore, been led to the recommendation to the Senate that the two measures be united. The bill for establishing the two Territories, it will be observed, omits the Wilmot proviso, on the one hand, and, on the other, makes no provision for the introduction of slavery into any part of the new Territories. That proviso has been the fruitful source of distraction and agitation. If it were adopted and applied to any Territory it would cease to have any obligatory force as soon as such Territory were admitted as a State into the Union.—There was never any occasion for it to accomplish the professed object with which it was originally offered. This has been clearly demonstrated by the current of events.—California, of all the recent territorial acquisitions from Mexico, was that in which, if any where within them, the introduction of slavery was most likely to take place; and the constitution of California, by the unanimous vote of her convention, has expressly interdicted it. There is the highest degree of probability that Utah and New Mexico will, when they come to be admitted as States, follow the example. The proviso is as to all these regions in common, a mere abstraction. Why should it be any longer insisted on? Totally destitute, as it is, of any practical import, it has nevertheless had the pernicious effect to excite serious, if not alarming, consequences. It is high time that the wounds which it has inflicted should be healed up and closed; and that to avoid, in all future time, the agitations which must be produced by the conflict of opinion on the slavery question, existing as this institution does in some of the States and prohibited as it is in others, the true principle which ought to regulate the action of Congress in forming territorial governments for each newly acquired domain is to refrain from all legislation on the subject in the territory acquired, so long as it retains the territorial form of government—leaving it to the people of such Territory, when they have attained to a condition which entitles them to admission as a State, to decide for themselves the question of the allowance or prohibition of domestic slavery. The committee believe that they express the anxious desire of an immense majority of the people of the United States, when they declare that it is high time that good feelings, harmony, and fraternal sentiments should be again revived, and that the Government should be able once more to proceed in its great operations to promote the happiness and prosperity of the country undisturbed by this distracting cause.

As for California, far from feeling her sensibility affected by her being associated with other kindred measures—she ought to rejoice and be highly gratified that, in entering into the Union, she may have contributed to the tranquility and happiness of the great family of States, of which, it is to be hoped, she may one day be a distinguished member.

The committee beg leave next to report on the subject of the northern and western boundary of Texas. On that question a great diversity of opinion has prevailed. According to one view of it, the western limit of Texas was the Nueces; according to another, it extended to the Rio Grande, and stretched from its mouth to its source. A majority of the committee, having come to the conclusion of recommending an amicable adjustment of the boundary with Texas, abstain from expressing *opinion as to the true and legitimate western and northern* boundary of that State. The terms proposed for such an adjustment are contained in the bill herewith reported, and they are, with inconsiderable variation, the same as that reported by the Committee on Territories.

According to these terms, it is proposed to Texas that her boundary be recognised to the Rio Grande, and up that river to the point commonly called El Paso, and running thence up that river twenty miles, measured thereon by a straight line, and thence eastwardly to a point where the hundredth degree of west longitude crosses Red river; being the south west angle in the line designated between the United States and Mexico, and the same angle in the line of the territory set apart for the Indians by the United States.

If this boundary be assented to by Texas, she will be quieted to that extent in her title. And some may suppose that in consideration of this concession by the United States, she might, without any other equivalent, relinquish any claim she has beyond the proposed boundary; that is, any claim to any part of New Mexico. But, under the influence of a sentiment of justice and great liberality, the bill proposes to Texas, for her relinquishment of any such claim, a large pecuniary equivalent. As a consideration for it, and conceiving that a portion of the debt of Texas was created on a pledge to her creditors of the duties on foreign imports, transferred by the resolution of annexation to the United States, and now received and receivable in their treasury, a majority of the committee recommend the payment of the sum of ——— millions of dollars to Texas, to be applied in the first instance to the extinction of that portion of her debt for the reimbursement of which the duties on foreign imports were pledged as aforesaid; and the residue in such manner as she may direct. The said sum is to be paid by the United States in a stock, to be created, bearing five per cent. interest annually, payable half yearly at the treasury of the United States, and the principal reimbursable at the end of fourteen years.

According to an estimate which has been made, there are included in the territory to which is proposed that Texas shall relinquish her claim, embracing that part of New Mexico lying east of the Rio Grande, a little less than 124,933 square miles, and about 79,957,120 acres of land. From the proceeds of the sale of this land, the United States may ultimately be reimbursed a portion, if not the whole of the amount of what is thus proposed to be advanced to Texas.

It cannot be anticipated that Texas will decline to accede to these liberal propositions; but if she should, it is to be distinctly understood that the title of the United States to any territory acquired from Mexico east of the Rio Grande will remain unimpaired and in the same condition as if the proposals of adjustment now offered had never been made.

A majority of the committee recommend to the Senate that the section containing these proposals to Texas shall be incorporated into the bill embracing the admission of California as a State, and the establishment of a territorial government for Utah and New Mexico. The definition and establishment of the boundary between New Mexico and Texas has an intimate and necessary connexion with the establishment of a territorial government for New Mexico. To form a territorial government for New Mexico, without prescribing the limits of the Territory, would leave the work imperfect and incomplete, and might expose New Mexico to serious controversy, if not dangerous collisions, with the State of Texas. And most, if not all, the considerations which unite in favor of combining the bill for the admission of California as a State and the territorial bills apply to the boundary question of Texas. By the union of the three measures, every question of difficulty and division which has arisen out of the territorial acquisitions from Mexico will, it is hoped, be adjusted, or placed in a train of satisfactory adjustment. The committee, availing themselves of the arduous and valuable labors of the Committee on Territories, report a bill, herewith annexed, (marked A,) embracing those three measures, the passage of which, uniting them together, they recommend to the Senate.

The committee will now proceed to the consideration of, and to report upon, the subject of persons owing service or labor in one State escaping into another. The text of the Constitution is quite clear: "No person held to labor or service in one State, *under the laws thereof*, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but *shall be delivered up* on the claim of the party to whom such service or labor may be due." Nothing can be more explicit than this language—nothing more manifest than the right to demand, and the obligation to deliver up to the claimant, any such fugitive. And the Constitution addresses itself alike to the States composing the Union and to the General Government. If, indeed, there were any difference in the duty to enforce this portion of the Constitution between the States and the Federal Government, it is more clear that it is that of the former than of the latter. But it is the duty of both. It is now well known and incontestable that citizens in slaveholding states encounter the greatest difficulty in obtaining the benefit of this provision of the Constitution. The attempt to recapture a fugitive is almost always a subject of great irritation and excitement, and often leads to most unpleasant if not perilous collisions. An owner of a slave, it is quite notorious, cannot pursue his property, for the purpose of its recovery, in some of the States, without imminent personal hazard. This is a deplorable state of things, which ought to be remedied. The law of 1793 has been found wholly ineffectual, and requires more stringent enactments. There is, especially, a deficiency in the number of public functionaries authorized to afford aid in the seizure and arrest of fugitives. Various States have declined to afford aid and co-operation in the surrender of fugitives from labor, as the committee believe, from a misconception of their duty arising under the Constitution of the United States. It is true that a decision of the Supreme Court of the United States has given countenance to them in withholding their assistance. But the committee cannot but believe that the intention of the Supreme Court has been misunderstood. They cannot but think that the court merely meant that laws of the several States which created obstacles in the way of the recovery of fugitives were not authorized by the Constitution, and not that State laws affording facilities in the recovery of fugitives were forbidden by that instrument.

The non-slaveholding States, whatever sympathies any of their citizens may feel for persons who escape from other States, cannot discharge themselves from an obligation to enforce the Constitution of the United States. All parts of the instrument being dependent upon, and connected with each other, ought to be fairly and justly enforced. If some States may seek to exonerate themselves from one portion of the Constitution, other States may endeavor to evade the performance of other portions of it; and thus the instrument, in some of its most important provisions, might become inoperative and invalid.

But, whatever may be the conduct of individual States, the duty of the General Government is perfectly clear. That duty is, to amend the existing law, and to provide an effectual remedy for the recovery of fugitives from service or labor. In devising such a remedy, Congress ought, whilst on one hand securing to the owner the fair restoration of his property, effectually to guard, on the other, against any abuses in the application of that remedy.

In all cases of the arrest, within a State, of persons charged with offences; in all cases of the pursuit of fugitives from justice from one State to another State; in all cases of extradition provided for by treaties between foreign powers—the proceeding uniformly is summary. It has never been thought necessary to apply, in cases of that kind, the forms and ceremonies of a final trial. And when that trial does take place, it is in the State or country from which the party has fled, and not in that to which he has found refuge. By the express language of the Constitution, whether the fugitive is held to service or labor or not, is to be determined by the *laws of the State from which he fled*; and, consequently, it is most proper that the tribunals of that State should expound and administer its own laws. If there have been any instances of abuse in the erroneous arrest of fugitives from service or labor, the committee have not obtained knowledge of them. They believe that none such have occurred, and that such are not likely to occur.

But, in order to guard against the possibility of their occurrence, the committee have prepared, and herewith report, (marked B,) a section, to be offered to the fugitive bill now pending before the Senate. According to this section, the owner of a fugitive from service or labor is, when practicable, to carry with him to the State in which the person is found a record, from a competent tribunal, adjudicating the facts of elopement and slavery, with a general description of the fugitive. This record, properly attested and certified under the official seal of the court, being taken to the State where the person owing service or labor is found, is to be held competent and sufficient evidence of the facts which had been adjudicated, and will leave nothing more to be done than to identify the fugitive.

Numerous petitions have been presented, praying for a trial by jury in the case of arrest of fugitives from service or labor, in the non-slaveholding States. It has been already shown that this would be entirely contrary to practice and uniform usage in all similar cases. Under the name of a popular and cherished institution—an institution, however, never applied in cases of preliminary proceedings, and only in cases of final trial—there would be a complete mockery of justice, so far as the owner of the fugitive is concerned. If the trial by jury be admitted, it would draw after it its usual consequences, of continuance from time to time, to bring evidence from distant places, of second or new trials, in cases where the jury is hung, or the verdict is set aside; and of revisals of the verdict and conduct of juries by competent tribunals. During the progress of all these dilatory and expensive proceedings, what security is there as to the custody and forthcoming of the fugitive upon their termination? And if, *finally*, the claimant should be successful, contrary to what happens in ordinary litigation between free persons, he would have to bear all the burdens and expense of the litigation, without indemnity, and would learn, by sad experience, that he had by far better have abandoned his right in the first instance, than to establish it at such unremunerated cost and heavy sacrifice.

But whilst the committe conceive that a trial by jury in a State where a fugitive from service or labor is recaptured would be a virtual denial of justice to the claimant of such fugitive, and would be tantamount to a positive refusal to execute the provisions of the Constitution, the same obections do not apply to such a trial in the State from which he fled. In the slaveholding States, full justice is administered with the fairness and impartiality, in cases of all actions for freedom. The person claiming his freedom is allowed to sue in *forma pauperis*; council is assigned him; time is allowed him to collect his witnesses and to attend the sessions of the court; and his claimant is placed under bond and security, or is divested of the possession during the progress of the trial, to ensure the enjoyment of those privileges; and if there be any leaning on the part of courts and juries, it is always on the side of the claimant for freedom.

In deferrence to the feeling and prejudices which prevail in the non-slaveholding States, the committee propose such a trial in the State from which the fugitive fled, in all cases where he declares to the officer giving his certificate for his return, that he has a right to his freedom. Accordingly, the committee have prepared, and report herewith, (marked C.) two sections, which they recommend should be incorporated in the fugitive bill pending in the Senate. According to these sections, the claimant is placed under bond, and required to return the fugitive to that county in the State from which he fled, and there to take him before a competent tribunal, and allow him to assert and establish his freedom if he can, affording to him for that purpose all needful facilities.

The committee indulge the hope that if the fugitive bill, with the proposed amendments, shall be passed by Congress, it will be effectually to secure the recovery of all fugitives from service or labor, and that it will remove all causes of complaint which have hitherto been experienced on that irritating subject. But if in its practical operation it shall be found insufficient, and if no adequate remedy can be devised for the restoration to their owners of fugitive slaves, those owners will have a just title to indemnity out of the Treasury of the United States.

It remains to report upon the resolutions in relation to slavery and the slave trade in the District of Columbia. Without discussing the power of Congress to abolish slavery within the District in regard to which a diversity of opinion exists the committee are of opinion that it ought not to be abolished. It could not be done without indispensible conditions, which are not likely to be agreed to. It could not be done without exciting great apprehension and alarm in the slave States. If the power were exercised within this District, they would apprehend that under some pretext or another, it migh be hereafter attempted to be exercised within the slaveholding States. It is true that at present all such power within those States is almost unanimously disavowed and disclaimed in the free States. But experience in public affairs has too often shown that where there is a desire to a particular thing, the power to accomplish it sooner or later, will be found or assumed.

Nor does the number of slaves within the District make the abolition of slavery an object of any such consequence as appears to be attached to it in some parts of the Union. Since the retrocession of Alexandria county to Virginia, on the South side of the Potomac, the District now consists only of Washington county, on the north side of that river; and the returns of the decennary enumeration of the people of the United States show a rapidly progressive decrease in the number of slaves in Washington county. According to the census of 1830, the number was 4,505; and in 1840 it was reduced to 3,320; showing a reduction in ten years of nearly one third. If it should continue in the same ratio, the number according to the census now about to be taken, will be only a little upwards of two thousand.

But a majority of the committee think differently in regard to the slave trade within the District. By that trade is meant the introduction of slaves from adjacent States into the District, for sale, or to be placed in depot for the purpose of subsequent sale or transportation to other and distant markets. That trade a majority of the community are of opinion, ought to be abolished. Complaints have always existed against it, no less on the part of members of Congress from the South than on the part of members from the